

**INGRAM**  
**&**  
**ASSOCIATES, PLLC**

OFFICE OF CARROLL H. INGRAM

REC'D TN  
REGULATORY AUTH.

00 MAR 17 PM 3 15

ATTORNEYS

AND

COUNSELORS AT LAW

EXECUTIVE SECRETARY

March 16, 2000

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

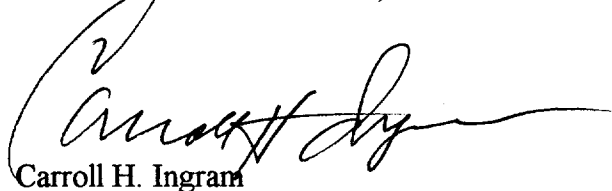
**RE: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc., Pursuant to the Telecommunications Act of 1996 - Docket No: 00-00141**

Dear Mr. Waddell:

Enclosed are the original and appropriate number of copies of the Motion to Dismiss Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration. Copies of the enclosed are being provided to counsel of record for all parties.

Cordially,

INGRAM & ASSOCIATES, PLLC

  
Carroll H. Ingram

211 SOUTH 29<sup>TH</sup> AVE  
POST OFFICE BOX 15039  
HATTIESBURG, MISSISSIPPI 39404-5039

PHONE (601) 261-1385  
FAX (601) 261-1393

POSTED  
3-20-00

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In re:	)	
	)	
Petition for Arbitration of the Interconnection	)	
Agreement Between BellSouth Telecommunications,	)	Docket No.00-00141
Inc. and NOW Communications, Inc., Pursuant	)	
to the Telecommunications Act of 1996.	)	
_____	)	

**MOTION TO DISMISS  
PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
FOR SECTION 252(b) ARBITRATION**

NOW Communications, Inc., by and through counsel files its motion to dismiss the BellSouth Section 252(b) Petition for Arbitration and presents to the Authority the following:

**I.**

BellSouth Telecommunications, Inc. on February 25, 2000 filed its Section 252(b) Petition for Arbitration seeking Regulatory Authority arbitration of Interconnection Agreement issues with NOW Communications, Inc. (February 25, 2000 BellSouth Telecommunications Notice of Filing attached as Exhibit A).

**II.**

BellSouth Telecommunications, Inc. on August 20, 1999 initiated renegotiation of the Interconnection Agreement between BellSouth and NOW Communications, Inc., in addition thereto, sought the immediate imposition of OSS charges under the initial Interconnection Agreement between the parties. (BellSouth Requests for Renegotiations attached as Exhibit B).

**III.**

Section 252(b)(1) of the Telecommunications Act of 1996 (47 U.S.C. Section 252(b)(1))

**POSTED**  
3-20-00

mandates the statutory “window” for filing a petition for arbitration. The statutory mandate is jurisdictional and cannot be amended, agreed, extended or waived. Jurisdiction cannot be conferred upon the Authority by agreement, amendment, extension or waiver.

#### IV.

The Regulatory Authority lacks jurisdiction to hear the BellSouth Petition. The Authority lacks subject matter jurisdiction and the attempted filing of the BellSouth Petition is outside the mandated statutory limitation for filing. The Petitioner BellSouthTelecommunications, Inc. is on notice of its failure to timely file its Petition for Arbitration by virtue of the statutory provisions of the Telecommunications Act of 1996 and by virtue of the action of the Public Service Commission of the State of South Carolina. The Public Service Commission of the State of South Carolina dismissed and/or returned the BellSouth Petition for Arbitration for the reason that the BellSouth Petition was not filed within the statutory mandated time. (South Carolina Public Service Commission Order/Letter to BellSouth February 28, 2000 attached as Exhibit C)

#### V.

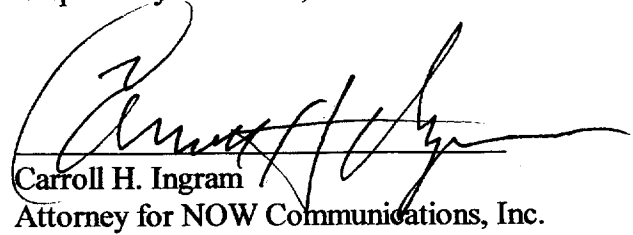
The Petitioner, BellSouth, failed to comply with the statutory provision for properly providing a copy of the Petition and any documentation to the other party or parties. See Section 252 (b).

#### VI.

The BellSouth Petition should be dismissed for other good and valid reasons to be presented pursuant to the rules and upon hearing. This Motion is in response to the Petition filed and may be supplemented with further response to be considered as if filed ab initio.

**WHEREFORE**, NOW Communications, Inc. respectfully requests the Authority to dismiss the untimely BellSouth Petition for Arbitration.

Respectfully submitted,



Carroll H. Ingram  
Attorney for NOW Communications, Inc.

Carroll H. Ingram  
Ingram & Associates, PLLC  
PO Box 15039  
Hattiesburg, MS 39404  
Phone: 601-261-1385  
Fax: 601-261-1393  
E-mail: [ingram@netdoor.com](mailto:ingram@netdoor.com)  
Bar No. 3023

Jennifer I. Wilkinson  
Ingram & Associates, PLLC  
4273 I-55 North  
PO Box 13466  
Jackson, MS 39236-3466  
Phone: 601-713-0062  
Fax: 601-713-0404  
E-mail: [Jenningram@aol.com](mailto:Jenningram@aol.com)

James Mingee, III  
McKay & Simpson  
4084 Coker Road  
Madison, MS 39110  
Phone: 601-856-1768  
Fax: 601-856-5720  
E-mail: [mingeelaw@aol.com](mailto:mingeelaw@aol.com)

R. Scott Seab  
NOW Communications, Inc.  
711 South Tejon Street, Suite 201  
Colorado Springs, CO 80903  
Phone: 719-633-3059  
Fax: 413-431-8445  
E-Mail: rss@nowcommunications.com

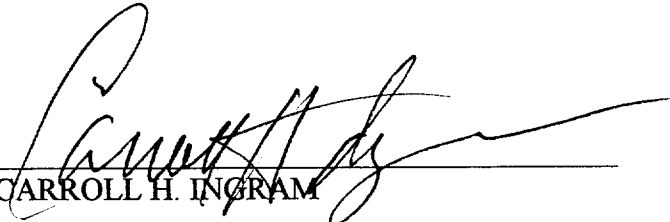
### **CERTIFICATE OF SERVICE**

I, Carroll H. Ingram, do hereby certify that I have, this day, served a true and correct copy  
of the foregoing Motion to Dismiss via U.S. Mail, postage fully pre-paid to the following:

Guy M. Hicks, Esq.  
BellSouth Telecommunications, Inc.  
Suite 2101  
333 Commerce Street  
Nashville, TN 37201-3300

R. Douglas Lackey  
Thomas B. Alexander  
General Attorneys  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

THIS, the 16<sup>th</sup> day of March, 2000.

  
CARROLL H. INGRAM

BellSouth Telecommunications, Inc. 615 214-6301  
Suite 2101 Fax 615 214-7406  
333 Commerce Street  
Nashville, Tennessee 37201-3300

Guy M. Hicks  
General Counsel

February 25, 2000

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc. Pursuant to the Telecommunications Act of 1996*  
Docket No. 00-00141

Dear Mr. Waddell:

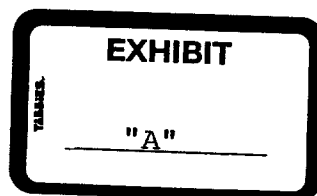
Enclosed are the original and thirteen copies of the Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc. Pursuant to the Telecommunications Act of 1996. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

  
Guy M. Hicks

*ch by permission*

GMH:ch  
Enclosure



**BellSouth Interconnection Services**

675 West Peachtree Street  
Room 34S91  
Atlanta, Georgia 30375

Page Miller  
(404) 927-1377  
Fax: (404) 927-8324

August 20, 1999

Mr. Larry Seab  
President  
NOW Communications, Inc.  
713 Country Place Drive  
Jackson, MS 39208

Dear Mr. Seab.

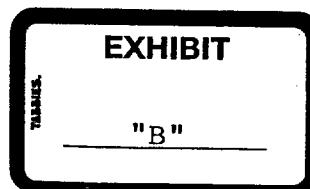
The purpose of this letter is to initiate renegotiations of the resale agreement between BellSouth and NOW Communications, Inc. as well as to request the execution of an OSS amendment to the current agreement while the parties work together to negotiate the new agreement.

The expiration date for your Agreement was May 31, 1999. BellSouth is hereby requesting that NOW Communications, Inc. commence good-faith negotiations with BellSouth to enter into a new agreement in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended.

In an effort to move the negotiation process along, a copy of the BellSouth Standard Resale Agreement is herein provided for your review. Please note that we have had a number of changes to our standard agreement that may be of interest to your company. Once you have had an opportunity to review the proposed agreement, please contact me with questions. If need be, we will begin scheduling meetings between the companies to address issues raised during your review.

In addition to renegotiating a new agreement, BellSouth also requests that NOW execute the enclosed amendment to add Operational Support System rates to the existing resale agreement. One of the major requirements imposed on BellSouth by the 1996 Telecommunications Act was to develop and implement processes that allow Competitive Local Exchange Carriers (CLECs) to access BellSouth's OSS functions including pre-ordering, ordering, maintenance and repair. Regulatory commissions at both the Federal and State level recognize that BellSouth should be allowed to recover these costs from the users of these processes.

As such, on April 15, 1999, BellSouth began billing OSS charges to CLECs whose agreement included OSS rates for the recovery of costs associated with providing CLECs access to its OSS. To date, you as a CLEC have not paid nor have you been billed for the use of these systems. However, since the various state commissions have ordered OSS rates, it is appropriate that we amend your existing agreement with BellSouth to include these rates. Therefore, attached is an amendment to your current agreement with BellSouth which includes BellSouth's proposed regional OSS rates as shown below.



\$ 3.50 per LSR received by one of the OSS interactive interfaces  
\$19.99 per LSR received by means other than one of the OSS interactive interfaces.

The proposed regional rates set forth above are billed on a "per LSR" basis. A transitional Threshold Charging Plan is also offered in conjunction with the regional rates. This Threshold Charging Plan provides for the mechanized price to be charged for both mechanized and manual LSRs for CLECs who transmit a significant portion of their LSR volume over a mechanized system. The specific details of this plan are included on the attached amendment.

As another option to CLECs, state specific rates set by the various commissions within the BellSouth region are available. In most cases, the regional rates are lower than state specific rates. In those states where the commission has not yet set rates, BellSouth proposes interim rates, subject to true-up once final rates have been set by the commission.

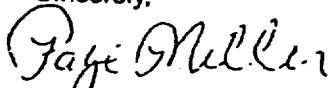
Please note that the State Commissions in three of the BellSouth states, have ordered OSS rates. In the remaining states, BellSouth is proposing interim rates which are subject to true-up. These interim rates are very much in line with the rates that have already been established in the other three BellSouth states.

Please review this amendment and sign both copies returning them to my attention at the above address. I will have the amendment executed on behalf of BellSouth and return one copy to you for your records. BellSouth will file the amendment with the appropriate regulatory agencies.

If you choose to expedite the signing of a new resale agreement, please contact me at (404) 927-1377 so that I can send you executable copies reflecting your company name throughout the agreement. Of course, if a new agreement is executed quickly, there is no need to sign the enclosed OSS amendment due to the fact that OSS rates would be included in the new resale agreement.

If you have any questions, please do not hesitate to call me.

Sincerely,



Page Miller

Manager - Interconnection Services/Pricing

Enclosures



COMMISSIONERS  
PHILIP T. BRADLEY, 4TH DISTRICT  
CHAIRMAN  
WILLIAM "BILL" SAUNDERS, 1ST DISTRICT  
VICE CHAIRMAN



COMMISSIONERS  
SCOTT ELLIOTT, 2ND DISTRICT  
RANDY MITCHELL, 3RD DISTRICT  
H. CLAY CARRUTH, JR., 5TH DISTRICT  
MIGNON L. CLYBURN, 6TH DISTRICT  
C. ROBERT MOSELEY, AT LARGE

GARY E. WALSH  
EXECUTIVE DIRECTOR  
Phone: (803) 896-5100  
Fax: (803) 896-5199

## The Public Service Commission State of South Carolina

PO Drawer 11649  
Columbia, SC 29211  
Koger Executive Center  
101 Executive Center Dr.  
Columbia, SC 29210  
[www.psc.state.sc.us](http://www.psc.state.sc.us)

February 28, 2000

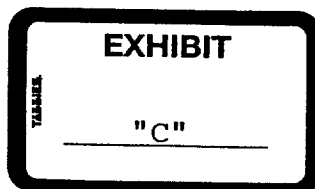
Caroline N. Watson, Esquire  
General Counsel – South Carolina  
BellSouth Telecommunications, Inc.  
1600 Hampton St., Suite 821  
Columbia, SC 29201

RE: Petition for Arbitration of an Interconnection Agreement Between  
BellSouth Telecommunications, Inc. and NOW Communications, Inc.  
Pursuant to the Telecommunications Act of 1996

Dear Caroline:

Enclosed is the Petition of BellSouth Telecommunications, Inc. requesting arbitration of an interconnection agreement with NOW Communications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996. I have not accepted this Petition for processing and am returning this Petition as being untimely filed.

In the Petition, BellSouth states that NOW requested, and BellSouth agreed to, a thirty-day extension of the arbitration window. The Telecommunications Act of 1996 provides in Section 252(b)(1) that a party may file a petition for arbitration during the "window" from the 135<sup>th</sup> day to the 160<sup>th</sup> day after the request for negotiation is received. The Petition filed in the above-referenced matter reveals that the request for negotiation was made on August 20, 1999. Based on the August 20, 1999, request for negotiation, the "window" in which to file for arbitration commenced on January 2, 2000, and ended on January 27, 2000. The Telecommunications Act of 1996 makes no provision for the parties, or the Commission, extending the "window" in which to request arbitration. Thus the parties cannot agree to extend the statutorily imposed time frame. Since the Petition was not filed between January 2, 2000, and January 27, 2000, the Petition of BellSouth is untimely and cannot be accepted for processing.



Caroline N. Watson, Esq.

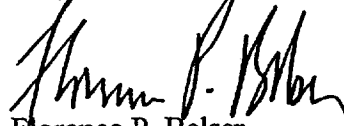
February 28, 2000

Page 2

---

Should you have questions regarding this matter, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Florence P. Belser", written over the typed name.

Florence P. Belser  
Staff Attorney

FPB:dd

Enclosure

cc: Mr. Larry Seab (without enclosure)

Carroll H. Ingram, Esquire (without enclosure)